

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

3 UNITED STATES OF AMERICA, Docket No. 3:18CR26

4 Plaintiffs, Toledo, Ohio

5 v. September 23, 2019

6 KARL J. ROGERS,

7 Defendants.

8 _____

11

12 APPEARANCES:

13 For the Plaintiffs: Tracey Ballard Tangeman
14 Office of the U.S. Attorney
15 Four SeaGate, Suite 308
Toledo, Ohio 43604
(419) 242-5675

16

17 For the Defendant:

Russell V. Leffler
65 Christie Avenue
Norwalk, Ohio 44857
(419) 681-5399

20

21 Court Reporter: Angela D. Nixon, RMR, CRR
1716 Spielbusch Avenue
22 Toledo, Ohio 43624
(419) 260-5259

23

24 Proceedings recorded by mechanical stenography, transcript
25 produced by notereading.

5 MS. TANGEMAN: Your Honor, Tracey Tangeman and
6 Matthew Simko on behalf of the government, with our case
7 agent Ryan Amstutz with the FBI.

13 THE COURT: I'm sorry.

14 MR. LEFFLER: Attorney Russell Leffler
15 substituting for Reese Wineman, Your Honor.

16 THE COURT: Sorry to hear that Reese has got some
17 medical issues. Thank you for making yourself available.
18 Otherwise, quite candidly, would be another month at
19 soonest before Mr. Rogers would find out what's going to
20 happen. And I have no doubt that that's, for him, the most
21 important --

22 MR. LEFFLER: Thank you, Your Honor.

23 THE COURT: -- thing that's been on his mind
24 since the agents knocked on his door, I really do. I think
25 it's important not to protract that anymore. It's been a

1 long time.

2 So Julie, the base offense level again is 33?

3 PROBATION: Total offense level 33, criminal
4 history category of one with 135 to 168 month range.

5 THE COURT: Counsel, would you concur that that's
6 the -- that the guideline range is accurately computed?

7 MS. TANGEMAN: Yes, Your Honor, on behalf of the
8 government.

9 THE COURT: Counsel?

10 MR. LEFFLER: We filed a memorandum in opposition
11 to that, Your Honor. We know what they said, though.

12 THE COURT: Okay. Let me -- I overlooked that,
13 I'm sorry. I usually read these things two or three days
14 in advance. I did it a little sooner because I've got a
15 couple arguments later in the week. Let me find the
16 Presentence Report. Give me a moment. Deanna, can you --
17 let me jump ahead a little bit on the restitution.

18 Ms. Tangeman, has that been resolved?

19 MS. TANGEMAN: I believe so, Your Honor. Would
20 you like me to put that on the record now?

21 THE COURT: Let's wait few a moments.

22 MS. TANGEMAN: Okay. Will do.

23 THE COURT: Counsel, let me do this, first of
24 all, Mr. Rogers, are you satisfied that your lawyer
25 standing in for Mr. Wineman has undertaken to prepare both

1 him and you for today's proceeding?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You're ready to proceed?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And, counsel, why don't you restate
6 your objection. I'm having some trouble finding -- I mean,
7 I read it, thought about it.

8 MR. LEFFLER: Yes, Your Honor. Essentially some
9 of the enhancements were based on the things that we think
10 are included, and we attached the decision I think that
11 Judge Zouhary had made attacking those things.

12 THE COURT: Right, now I recall.

13 MR. LEFFLER: And I think that was our objection.

14 THE COURT: Are there any beyond, Ms. Tangeman,
15 what I would call sort of the conventional objections made
16 to -- I mean, none came to mind in reading it? Those are
17 matters for appeal. But in light of my understanding of
18 prevailing Sixth Circuit law I must overrule them.

19 MS. TANGEMAN: That is correct, Your Honor. I
20 did not see any new arguments. The Court has addressed
21 those arguments.

22 THE COURT: Counsel, would you agree with that,
23 that these are principally --

24 MR. LEFFLER: Generally, yes.

25 THE COURT: Any that do not fit that category?

1 MR. LEFFLER: I mean, the only -- obviously we
2 also have some interesting issues on whether the testimony
3 he gave admitting to his sexual addiction at the trial
4 qualifies for any reduction when he actually went to trial
5 and didn't make --

6 THE COURT: I believe it does. Ms. Tangeman's
7 going to object, but he clearly and forthrightly admitted
8 that he was addicted to child pornography.

9 MR. LEFFLER: Yes, Your Honor.

10 THE COURT: And Ms. Meyers has reminded me that
11 very often impediment to rehabilitation in these cases is a
12 reluctance to be as forthright as he was. He did so in a
13 way most unfortunate. I think the most I can do is a
14 two-level reduction. I don't think I have had -- I mean,
15 was unusual. None of us knew, Mr. Rogers, why you wanted
16 to go to trial until you went to trial, until you
17 testified. And then it was clear.

18 Ms. Tangeman, I think that reduces the guideline
19 to 108 or something; right, Ms. Meyers?

20 PROBATION: Yes, Your Honor. If we apply two
21 levels for acceptance, is a 31 and a 108 to 135.

22 THE COURT: Ms. Tangeman, I'm -- I've stated my
23 reasons for that. I realize I am short circuiting your
24 chance to argue, by all means preserve the matter for the
25 record and make your objection, please. And I know it

1 might well lead to an appeal because, you know, the law is
2 generally that how can you accept responsibility if you
3 contest the charges, put the government to its proof.
4 Well, to do what he did was a convoluted, expensive and
5 inconvenient way for it to happen, but I think applying the
6 sense of an acknowledgment, an admission, particularly in
7 these cases, is an important first step. I think in every
8 criminal case that's why we give it the weight that we do
9 at the time of sentencing because it's a sign, signal that
10 when the individual returns, there's some greater hope that
11 he or she will, in fact, be a law abiding citizen rather
12 than the person who says I didn't do it, I didn't do it,
13 I'm innocent, I've been framed, fake news, so to speak.
14 And that's my rationale.

15 Go ahead. By all means preserve it. And I don't
16 mean to cut you short, but, you know, once again, I want
17 you to know exactly what I'm thinking about.

18 MS. TANGEMAN: I appreciate that, Your Honor.
19 And I would note that I filed a sentencing memo that
20 addresses this very argument, it's Subsection A of the
21 argument section of my sentencing memo, document 65, that
22 was filed on September 17th. Not going to go through,
23 obviously, all the case law that I cited. I would just
24 note that I incorporate all of those arguments. And the
25 government's opinion is that the defendant went to trial

1 not to preserve any legal issues, which is really the only
2 rare situation that the guidelines contemplate for someone
3 who goes to trial and still receives acceptance, so he does
4 not fall within that. We would respectfully disagree. We
5 felt that the trial was more his opportunity, and his
6 family's opportunity, to make sure the public knew that his
7 family knew nothing about it. I saw it almost as if he
8 wanted to clear the rest of his family members.

9 And in my opinion, and I think the prosecution
10 team's opinion, we felt that the defendant minimized
11 with -- within his testimony by downplaying the
12 significance of having sex toys next to child pornography.
13 In fact, I think he, very defensively, said those sex toys
14 are legal. Well, that wasn't the point of the questioning.
15 Point of the questioning is that he was using them to
16 masturbate to children's items, childrens' underwear, and
17 child pornography. And then, likewise, he minimized --

18 THE COURT: I agree, Ms. Meyers, on both, and I
19 agree the paraphernalia is a troubling aspect of the case.

20 MS. TANGEMAN: He also minimized with the agents
21 when he was being interviewed. And, in fact, there's a
22 whole exchange where one of the TFOs tries to explain to
23 him, quote, just viewing, as he describes it, how that
24 really isn't bad because it's not hurting the child. And
25 the TFO, to his credit, in a very professional and

1 courteous way, basically says we're going to have to agree
2 to disagree. He tries to explain it to the defendant
3 repeatedly and the defendant doesn't get it. He literally
4 does not get it. And that, unfortunately, is the problem
5 that we see time and time again, even with defendants who
6 admit to receiving or distributing child pornography, in
7 this case receiving. But he didn't really understand that
8 aspect of it.

9 We would also note that while technically he was
10 not distributing, because this kind of dark web may -- was
11 filtering portions of child pornography files through other
12 people's IP addresses, perhaps even unbeknownst to the
13 users. This defendant was very tech savvy, knew all about
14 this program, and, in fact, said, I thought that this
15 program was going to ensure me anonymity. So we would
16 dispute the fact that the defendant denies his distribution
17 to the extent that we would say he knows that these
18 programs are filtering child pornography through other
19 people's systems. Perhaps not enough to warrant the
20 enhancement, but enough that when he takes the stand and he
21 denies distribution, we feel that's another form of his
22 minimization.

23 And lastly, of course, is the fact that we didn't
24 elicit some things which are somewhat disturbing, like the
25 fact that he had videos about how to groom a child. And

1 nowhere in his interview did he sort of express remorse for
2 that. So for all of those reasons and the arguments we
3 noted, Your Honor, the government's position is that he
4 should not receive any reduction for acceptance.

5 THE COURT: Okay, those are fair points. I was
6 cognizant -- I'm sorry, as you know, sometimes I have a lot
7 to do on these Mondays, I obviously remember the trial.
8 One thing I do remember, though, he even admitted I'm
9 addicted to child pornography. I think that's an important
10 starting point. I'm going to -- you know what I'm going to
11 do, I'm going to ignore that. I'm going to reach the
12 sentencing, and I'm not there yet, trust me, depends what I
13 hear from Ms. Tangeman. I've heard part of it and read
14 your sentencing memorandum and heard from him. I'm going
15 to impose the sentence within the 3553(a) factors, and
16 without reference to whether I should give the
17 enhancement -- give the reduction or not for acceptance,
18 quite candidly, one way or the other. If I would permit
19 Ms. Meyers to testify, I think she would agree with me
20 that's not the focus of what I'm trying to accomplish or
21 get to today. It's just that -- on the other hand,
22 Ms. Tangeman, it's an odd kind of set of acceptance when
23 you put 12 ordinary people and The Court and its personnel
24 to the task of viewing that stuff. It's one thing to talk
25 about child pornography, but I'll be quite candid, there

1 are some of those images, and from an earlier trial like
2 this I had, you can't forget them. You can't erase them,
3 the nightmarish aspect of them. In this case, if I
4 remember, I think there was a child in diapers. I mean, my
5 God, and to take pleasure in that.

6 And the other thing I would say, Ms. Tangeman,
7 because you may have mentioned this, and we have 800 pages
8 I think it is, right, Julie, victim impact statements? I
9 didn't read those. I didn't have time. However, I read
10 enough to know that the -- the -- the impact of being a
11 victim certainly went above a certain age, one who, in
12 fact, has the ability to recollect. I recollect things
13 when I was three years old, my brother coming home
14 February 1943 or '44, Roosevelt's death was -- I was not
15 even five years old. There's certain things that make an
16 impact at a very young age. And my dad went off to war in
17 December of 1944. These are things I remember from a very
18 young age. You have to read but two or three victim impact
19 statements to realize the potential life-long impact that
20 being a victim has. It's bad enough to be put to the task
21 of looking at the stuff as a juror, as a prosecutor, as a
22 defense attorney, and as a pretrial service probation
23 officer, but, you know, especially with somewhat older
24 children. And to some extent, maybe it's an impossible
25 thing to ask for somebody to understand that, indeed, just

1 viewing is exactly the kind of thing that is on the minds
2 of many victims, that there are people out there that will
3 never go away, right Ms. Tangeman?

4 MS. TANGEMAN: Yes.

5 THE COURT: That's a very common theme, right,
6 Julie, in terms of it will never go away, it's out there, I
7 can't stop it. And I don't -- I don't think there were
8 older, you know, but still underage victims in this case.
9 But nonetheless, with them, what if somebody recognizes me,
10 I don't look that much different 15 years later than I did
11 when I was 15 years old, maybe one of those people who
12 looked at me in that moment of degradation will recognize
13 me, and if you saw me then, then what now. So I'm going to
14 set that to one side. I'm simply not going to take that
15 into account. Thank you, Ms. Tangeman, for your apt and
16 appropriate remarks.

17 The other thing, quite candidly, counsel, I will
18 have given her the case, which could well be appealed, in
19 all likelihood would, which is simply if I got reversed
20 we'd be right back here, I would probably give the same
21 sentence which is the point I'm trying to make, okay. I
22 found acceptance once after a trial where the defendant, in
23 a presentencing session, finally admitted, yes, or kind of
24 perhaps maybe I did sell the drugs, because I was trying to
25 avoid a then mandatory life term of imprisonment.

1 Ms. Tangeman, I had the panel with Cissy Daughtery, Ron
2 Gillman and Eric Clay. And if I had chosen a Sixth Circuit
3 panel to get away with that, those are the three judges,
4 and they came to me with about a page and a half, you can't
5 do that, and I'm aware of that too, okay. So why give her
6 that opportunity because that was simply leave Mr. Rogers
7 in a position, well, what's going to happen now, 18 months
8 from now, and that doesn't do any good, okay. So
9 Ms. Tangeman, I -- that's how I'm going to handle your --
10 thank you very much. Counsel, is that okay with you?

11 MR. LEFFLER: Yes, Your Honor.

12 THE COURT: Both of you, you've preserved it for
13 possible appeal. But obviously I'm going to take the
14 conduct and all of its circumstances into account,
15 including those Ms. Tangeman's called to my attention.

16 That being said, Ms. Tangeman, on behalf of the
17 government?

18 MS. TANGEMAN: Thank you, Your Honor. Again, we
19 also address the sentencing issues in our sentencing
20 memorandum, and so I won't, in the interest of time, rehash
21 all of those arguments. But the -- the bottom line is that
22 we do not feel that the mandatory minimum is appropriate in
23 this case. We would respectfully disagree with the judges
24 in this courthouse who do not give guideline sentences in
25 receipt of child pornography cases, so we're not going to

1 make that argument. The Court knows my feeling on that.

2 But then moving away from that, and obviously all
3 the arguments I made are arguments in support of a
4 guideline sentence, but knowing that that is not typically
5 the practice of The Court, I guess my focus would be more
6 on why the mandatory minimum is not appropriate, that this
7 sentence needs to be higher than that.

8 THE COURT: I would agree with that.

9 MS. TANGEMAN: Very good then.

10 THE COURT: I mean, as I say, as apparently
11 willing and ready to accept rehabilitation --
12 rehabilitative efforts, and also being of the view sooner
13 we get him out of the prison system, the more effective
14 those efforts are likely to be. On the other hand, I don't
15 really know what goes on in prison, just that the flood of
16 people who long ago outgrew the capacity of Butner where
17 they used to go, five, ten -- ten years or so ago. And
18 so -- I -- I agree with that most certainly.

19 MS. TANGEMAN: And with that in mind, Your Honor,
20 then we would just note some of the factors that we believe
21 support a sentence well above the mandatory minimum. First
22 of all, this defendant had an enormous collection. By
23 guideline calculations, he had close to -- little over
24 6,000 images, and then the videos were 2,000. And all
25 together then if you were to multiply that times 75, you're

1 talking about tens of thousands of images under the
2 guideline since the videos are converted. One video equals
3 75 images. His collection also included the worst of the
4 worst, believe it or not.

5 THE COURT: I agree with that.

6 MS. TANGEMAN: Believe it or not --

7 THE COURT: I'm all too well aware of that.

8 MS. TANGEMAN: We do categorize these, and he had
9 the kind of stuff that we put in the worst category,
10 infants, toddlers, penetrative sex acts, The Court knows,
11 well aware, and, frankly, The Court doesn't even have to
12 imagine, The Court was forced to view it, as was the jury.
13 And we would also note that the other items that he had are
14 concerning, and I've mentioned those. His -- the presence
15 of childrens' underwear, his, you know, the videos on how
16 to groom a child.

17 THE COURT: I really am aware of those
18 aggravating factors.

19 MS. TANGEMAN: Even the fact that he refused to
20 take a polygraph, which is well within his right. And I
21 don't suggest The Court should hold that against him,
22 that's not what I'm saying. What I'm saying is we will not
23 ever know whether or not there was any hands-on conduct
24 because of that.

25 And we would also note that, while admitting that

1 you have an addiction is important, you know, he had the
2 means to get help. He worked for the railroad, he had a
3 very good income. He had savings, he lived alone. He
4 managed to hide this from his family. He could have very
5 easily gone and sought out counseling and he didn't. He
6 didn't do that. In fact, he allowed it, even with the
7 means that he had, to continue.

8 And I think the most powerful thing is really to
9 read these victim impact statements. I mean, The Court hit
10 on it perfectly --

11 THE COURT: I did not -- there was simply too
12 many.

13 MS. TANGEMAN: Yes, but you hit on it perfectly,
14 based on what was even just the PSR, the quotes from the
15 victims, that the initial abuse recedes into the past.
16 These children grow up, and believe it or not, their abuser
17 actually becomes the least exploiting of all of the people
18 in the child pornography realm. What takes over as the
19 years pass are people like this defendant, the ones who are
20 continuing to receive and distribute, or one or the other.
21 Those are the ones that keep their harm multiplying,
22 compounding and worsening. And I think several of them
23 said it best, you know -- you know, one woman said, one
24 parent said, If we fail them now, we fail ourselves. You,
25 Your Honor, have the power here today to say enough is

1 enough. Please, Your Honor, here today say enough is
2 enough. I mean, those are the words of a victim, and
3 that's their feeling on it, is that they can't ever get
4 ahead of this. They can't ever get ahead of this. And
5 that's reflective in the psychological evaluations, the
6 financial records. Some of these children grow up to be
7 adults who literally cannot leave the house, who cannot
8 function, who have substance abuse issues to try to cope,
9 who have multiple suicide attempts behind them, who have
10 psychiatric stays behind them. And then, of course, there
11 are those that somehow manage to find some kind of normalcy
12 amidst all of the abuse.

13 But we would note the defendant's noticeable lack
14 of remorse during the trial. He admitted his conduct, and
15 he has admitted it since, but not once did we hear in the
16 interview, or at the trial, or even in the PSR, him ever
17 express any understanding as to what this has done to the
18 victims. The only thing we heard was him lament his
19 addiction and what it's done to him. In fact, in the
20 interview, it would have been -- if I had been gay, that
21 would have been better, that would have been more
22 acceptable. This is much less acceptable. I could never
23 ever talk about this with my family. Well, that's all fine
24 and good, but, you know, the reality is he had resources,
25 and he didn't avail himself of those. And in the absence

1 of that remorse, in the absence of any expression of
2 understanding, just what he has -- his actions have done to
3 these victims, we would argue that a sentence well above
4 the minimum, regardless of The Court's position on
5 acceptance, would be appropriate in this case. Thank you.

6 THE COURT: Counsel?

7 MR. LEFFLER: May I respond?

8 THE COURT: Absolutely.

9 MR. LEFFLER: Just --

10 THE COURT: Otherwise I would be giving
11 Mr. Rogers a gold plated --

12 MR. LEFFLER: I know, I haven't seen you probably
13 in about 35 years when you were a magistrate and I had a
14 few cases up here in the old days. I was the elected
15 prosecutor in Huron County for 24 years and had a lot of
16 child abuse cases, not so many child pornography cases, a
17 few. Of course the sentences were not quite as harsh for
18 some of that period of time. I don't take child abuse as
19 anything but horrifying. I think it's a little bit crazy
20 to argue that it's more horrible to look at something than
21 the actual rapist and abusers, boggles me a little bit.
22 But I understand there's continuing effects that are
23 horrible, and this is bad.

24 THE COURT: I think there's -- it's a difference
25 in kind, obviously, than the actual physical assaults. Of

1 course for many of these victims, whether it's one video or
2 picture or whatever, these aren't one time occasions in
3 their lives.

4 MR. LEFFLER: It's horrible, it's horrible. I've
5 seen this, it's really, really bad. And I know the
6 sentences are horrific, I've put people away for life in
7 prison without parole for various sex offenses.

8 I want to focus on what's good about this
9 defendant. He was a hard working man, worked for the
10 railroad for 14 years, and I know this Court has had some
11 experience with railroad cases. He's a hard working
12 person. Sometimes I know the implication is that all he
13 does is sit there looking at this video, but most of the
14 time he's working and sleeping. Probably every Saturday
15 he's doing this crazy stuff with these addiction to these
16 sex offenses.

17 And he's also hiding it from his family. That's
18 his big thing, and I don't disagree that that's part of his
19 motivation. It's horrible. He knows what he was doing,
20 that the addiction is so horrible, and he knows that. But
21 he is a hard working person.

22 I also want to note for The Court that he went
23 into the Marine Corp. for four years at a relatively late
24 age. I think part of that was a way of his to try to treat
25 this problem, that he went into the military thinking I'll

1 change my life, I'll do something different, and went
2 into -- went into the Marine Corp. for four years.

3 THE COURT: I know it's in the Presentence
4 Report. When did he serve?

5 THE DEFENDANT: It was October of 2009 to October
6 of 2013, Your Honor.

7 THE COURT: Deployed?

8 THE DEFENDANT: I never got the chance, Your
9 Honor.

10 THE COURT: Okay.

11 MR. LEFFLER: And -- but I do think that was part
12 of the motivation for that, to do that. And obviously he
13 recently then decided he couldn't -- he only had a four
14 year leave of absence from the railroad or he couldn't keep
15 the job, then he went back and went to work.

16 He's been a hard working person. He's done these
17 things, he can't hide it. I don't really grasp myself how,
18 on this kind of thing, you know, on the -- an older child
19 at 16 or 17 or 15 or 14, I understand there's 7 billion of
20 us, and the sex drive is as the good Lord thinks that's
21 where we're at. For these children, that's obviously a
22 drive that went nuts in his case. That is inappropriate,
23 and I don't know how that happened, where the psychology
24 is, that's a matter for the professionals and psychiatrists
25 to work on.

1 I know that he's been in counseling. I know
2 he's going to go to prison for a significant period of
3 time, and when he gets out he's going to have to deal with
4 this problem. I think he knows he has to deal with it.
5 There's certainly been some hiding from the family about
6 the depth of the images and what he's seen. Doubt that his
7 mother is wanting to see these things, that's part of maybe
8 the hiding of this.

9 But he's accepted his responsibility, and he
10 really does want to change, Your Honor. We sat and agreed
11 to the restitution. He's gone through the numbers of
12 the -- of the victim statements himself, and I think gained
13 some knowledge of how this affects people going on. I
14 think I've learned some of that myself looking at that,
15 that this is terrible for people. Some of that is the
16 internet, I guess anything we ever do is preserved forever
17 for all of us, whatever -- whatever we've done.

18 Those are just some thoughts I've had. Obviously
19 I haven't had a lot of time to work on this, Your Honor. I
20 got to spend a couple of hours with him on Friday. I don't
21 know the family well. But I did want to add those things,
22 Your Honor.

23 THE COURT: Mr. Rogers, you have the right to
24 speak on your own behalf before I decide what I'm going to
25 do.

1 THE DEFENDANT: I would like to address The
2 Court, please.

3 THE COURT: Absolutely. You have that absolute
4 right.

5 THE DEFENDANT: Your Honor, ladies and gentlemen
6 of The Court, first of all I'd like to apologize for taking
7 the time of The Court in this matter. And I would like to
8 say that at the time that I was downloading this material I
9 didn't fully understand the impact that it had on the
10 persons involved, the victims. And through working with a
11 counselor, she has opened my eyes to the lasting effects of
12 child pornography, and she's given me different
13 perspectives on how they feel about these kind of things
14 being out there in the public view. And it's changed my
15 whole view about it. It's, like, I -- I understand that,
16 you know, making an apologize is not going to fix things
17 for these victims, but I do want to make an apology, and I
18 can only ask for their forgiveness.

19 THE COURT: Anything further?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Julie, have you got a moment? I'm
22 going to step down with the probation officer for a moment.

23 (A brief recess was taken.)

24 THE COURT: I'm obviously having trouble in
25 reaching -- Ms. Tangeman, something occurs to me. To your

1 knowledge, have other judges in the building, Judge
2 Zouhary, Judge Helmick, perhaps Judge Potter, I'm not sure
3 you were here when he was here, but I think that's -- have
4 you -- have you had, or do you know in your office, or
5 maybe do the agents know, where people have gone to trial
6 in front of my colleagues, may have had a guideline range
7 in this range, what they have done?

8 MS. TANGEMAN: Are you speaking specific to child
9 pornography, Your Honor?

10 THE COURT: Child pornography, yeah.

11 MS. TANGEMAN: I have not had, I believe, any
12 other child pornography case go to trial except in front of
13 you.

14 THE COURT: Okay. And you don't know -- I
15 mean --

16 MS. TANGEMAN: I'm trying to think of one
17 offhand. I had one that got close, the defendant pled a
18 week before, it was a case in front of Judge Helmick. That
19 was a little bit different because the defendant had been
20 accused of actually basically kidnapping and actually
21 assaulting a child when he was a juvenile. So that
22 sentence, I think, was more reflective -- we had the victim
23 come back and testify. So that would probably not be
24 exactly on --

25 THE COURT: Do you recall what the -- what the

1 sentence was in that case?

2 MS. TANGEMAN: I believe it was in the 90s, 92
3 maybe, 92 months maybe. It was --

4 THE COURT: You don't recall the base offense
5 level or whatever?

6 MS. TANGEMAN: I do not.

7 THE COURT: Likely have been in this
8 neighborhood?

9 MS. TANGEMAN: It would have been slightly higher
10 because the defendant in that case was actually
11 distributing. And I can tell you that in front of Judge
12 Helmick I received a 72 month sentence for a defendant who
13 had no prior record, admitted, did not go to trial, worked
14 for Chrysler for 30 some odd years, went to Maumee Valley,
15 and also had had a heart transplant, so with what I would
16 call more mitigation than this defendant.

17 I have had a case in front of you where you did,
18 in fact, give the mandatory minimum. It was the Sean
19 Magner case where he was a --

20 THE COURT: What was that mandatory minimum?

21 MS. TANGEMAN: That mandatory minimum was 60
22 months, and you gave 60 months. He took care of elderly
23 women. He had been raped as a child, and he basically had
24 lived a life of essentially a hermit. He did not leave the
25 house often, so forth. So to give some perspective both on

1 the higher end and on the lower end --

2 THE COURT: All right.

3 MS. TANGEMAN: I can go on if you'd like.

4 THE COURT: No, I understand. The only case I've
5 tried I gave -- actually 21 year old Boy Scout who
6 testified, you know, blamed his roommate who testified he
7 was bogus, he couldn't admit it. I gave him 72 months.
8 But, candidly, that was some time ago when we were sort of
9 just getting the on slot of the mandatory minimums. Okay.

10 Okay. Anything further, counsel?

11 MR. LEFFLER: No, Your Honor.

12 THE COURT: I'm going to impose a term of 96
13 months. Quite candidly, in light of what she indicated,
14 there was particularly aggravating circumstances in that
15 case, as I think are in this case. I realize it's a long,
16 long, an awful long time, that's what's troublesome to me.
17 I think the longer we warehouse people, we may not be
18 serving the desire. And I think Mr. Rogers has it, to
19 become rehabilitated, and to become free of this.

20 But on the other hand, I do think that it's
21 appropriate to try, however ineffective it may be, to
22 maintain some consistency at least within the same
23 courthouse. Ms. Meyers indicates that in Cleveland in this
24 case, there are many judges there who give guideline
25 sentences. That's not the custom here. I think

1 Ms. Tangeman has made arguments in almost every case you've
2 had, guidelines. And rarely, if at all, that -- this is
3 about 24 months, two years longer than any sentence I've
4 previously given in any child pornography case. And I'm
5 doing it without regard to whatever the -- I realize, I
6 guess, you know, it's even -- be a variance even from -- so
7 it's a very significant variance. It's, what, about around
8 a quarter, a third to a quarter off of what -- if I do the
9 math correctly, I don't know, but that is my sentence.

10 So formally to pronounce sentence, pursuant to
11 Sentencing Reform Act of 1984, it's the judgment of The
12 Court defendant be and hereby committed to the custody of
13 the Bureau of Prisons to serve a term of 96 months. You
14 will -- you will be remanded forthwith to custody of the
15 Bureau of Prisons. I hope you are aware of that
16 likelihood. As you know, I released you following the
17 trial, over the vigorous objection of Ms. Tangeman. And
18 objection that was well taken, I disregarded it, perhaps
19 unlawfully.

20 In any event, that will be followed by a life
21 term of supervised release. You shall report within 72
22 hours upon your release from the custody of the Bureau of
23 Prisons to begin serving that term. You shall report to
24 pretrial service and probation office either in this
25 district or in the district in which you are released.

1 You do have a life-long obligation to register as
2 a sex offender. There is a limited period of time if you
3 change residences, whether in the same community or
4 elsewhere, within which you have to make that registration.
5 That is -- failure to do so is prosecuted vigorously by
6 this office, and I assume that practice is going to
7 continue forever.

8 While on supervised release you'll be required to
9 comply with all the standard conditions adopted by this
10 Court, of which you'll be made aware now and at the time
11 you are released. Among other things, will include, at the
12 discretion and direction of the probation officer, sex
13 offender rehabilitation and treatment, inpatient or
14 outpatient. Such other treatment or such condition as the
15 probation officer shall deem necessary. I don't think
16 drugs or alcohol are a problem; is that correct?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay. While on supervised release,
19 among other things, for the rest of your life you can never
20 again lawfully possess a firearm, I'm sure that won't be a
21 problem.

22 On supervised release you have to -- wherever
23 you're living, wherever you're working, your automobile,
24 any storage containers, your computer, all can be subject
25 to a search, based on reasonable suspicion that you've

1 committed a violation of supervised release, and/or
2 committed another offense, state, local or federal. And
3 obviously you cannot commit another offense. Failure to
4 consent to a search will be grounds for revocation. And
5 you have to notify those with whom you may be living of
6 that condition.

7 You will have to submit a DNA sample to -- to the
8 Bureau of Prisons. There's a special -- there's a --
9 there's some -- there's a special assessment of \$5,000; is
10 that correct, Ms. Tangeman?

11 MS. TANGEMAN: The JVTA assessment, correct, and
12 then there's also just a special assessment of \$100 as
13 well.

14 THE COURT: \$100.00 dollars for the conviction.

15 With regard to restitution, it's my understanding
16 that the parties have reached agreement, that agreement
17 will be incorporated into the judgment entry.

18 MS. TANGEMAN: And Your Honor, if I may, there
19 are two corrections on that point in the PSR. On -- this
20 is the final copy, so it's document 59, page ID 448, or
21 Ms. Meyers' Page 26. It should be noted that the victim
22 for the Jan Socks one series, should be Sierra,
23 S-I-E-R-R-A, not Violet. And for the SweetSugar series,
24 while there are three victims who are part of that series,
25 the defendant had in a video depicting only one of those

1 victims, and that victim was Pia, P-I-A. So the other two
2 victims, Mia and Ava, should not be mentioned there. And
3 then, lastly, I would note there are three additional
4 series that did not make it into the PSR, and my apologies
5 for not bringing this to Ms. Meyers' attention sooner so
6 that they could be added. I did confirm with my victim
7 witness advocate, we went through the 800 plus pages, and
8 found, in fact, the request to confirm those. One
9 additional series is Two Crazy Gurls, spelled G-U-R-L-S,
10 and that victim is Chelsea. And then there's also the
11 Vicky series, Vicky spelled with a Y.

12 THE COURT: I'm familiar with those.

13 MS. TANGEMAN: And also the Tara series.

14 THE COURT: I'm familiar with those.

15 MS. TANGEMAN: And we would note that the request
16 for Two Crazy Gurls, or the Chelsea victim, is at least
17 \$10,000. Vicky requested \$10,000, Tara requested
18 \$18,136.40.

19 Now, having said that, I would note that
20 Mr. Leffler was very good in responding and getting back
21 with the government multiple times on Friday in an effort
22 to resolve this. And I believe we have tentatively, and he
23 can confirm or dispute this, that we have tentatively
24 worked out an agreement for restitution as follows. And I
25 explained how I came up with it. I made a chart of

1 degrees. So in other words, depending on the number of
2 files the defendant had of each series, and then that
3 obviously would go up, depending on the number of files he
4 had. Then I cross referenced each series to determine how
5 many files he had within each series. So that broke down
6 to being \$5,000 for the AtSchool series for victim Violet,
7 \$4,000 for the Cindy series, \$3,000 for the Jan Socks one,
8 and victim Sierra, \$4,000 for the Lighthouse series, and
9 victim Marine, \$6,000 for the Marineland series for victim
10 Sarah, \$30,000 for the PinkHeart Sisters series, which
11 includes two different victims; \$3,000 for the Jenny
12 series; \$3,000 for the SweetSugar series; \$4,000 for the
13 Jessica series; \$8,000 for the Two Crazy Gurls series;
14 \$5,000 for the Vicky series; and \$5,000 for the Tara
15 series, for a total of \$80,000.

16 And along those same lines, Your Honor, I did
17 note in my sentencing memorandum that we have concerns over
18 the defendant not disclosing his vast collection of
19 firearms and ammunition, some of which my TFO said appeared
20 to almost -- some of them appeared to be older and almost
21 collectibles. So we would ask that a valuation of those
22 firearms be permitted by The Court in order to address and
23 pay for the restitution. And we would note that every
24 single restitution request came with financials that
25 supported those requests. And, in fact, the financial

1 supported requests much higher than the numbers where we
2 arrived. But I would note that in the extensive 800 plus
3 pages, most of that is actually psychological evaluations
4 and financial forecasts done by experts, as The Court is
5 aware, that these victims go out and have to have in order
6 to meet the confines of Paroline.

7 And then lastly, Your Honor, I would note the
8 defendant is a homeowner as well, owns his own home. And
9 so to the extent that the restitution order may be
10 questioned, I would note the defendant does have both
11 property and assets, and we would ask for that valuation of
12 the firearms.

13 THE COURT: Okay. Counsel, have you had a chance
14 to consider -- have you had a chance to consider the
15 additional data in that regard?

16 MR. LEFFLER: Yes, Your Honor. We agreed to that
17 figure. And we -- of course we don't like it, but we've
18 agreed to that figure. There is -- the home is there's a
19 big mortgage on it, obviously he's going to be going to
20 prison, and the family's going to try to sell the home, and
21 there's some issues with that. We could provide a
22 suggested auctioneer for the -- for the guns that we know
23 is more likely to get a decent price to the -- to them, and
24 that's kind of where we're at with it, Your Honor.

25 THE COURT: Okay. Mr. Rogers, did you hear

1 Ms. Tangeman? And do you understand what's going on with
2 regard to the restitution computations?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you object to your counsel being
5 willing this morning to consent to those figures and
6 resulting whatever that total restitution figure is?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Okay. Then, counsel, if you'll,
9 before the end of the day if you could, or sometime
10 tomorrow, get that to Deanna so she can incorporate it --
11 Deanna, why don't you check with both counsel just to make
12 sure that that still concords with their understanding and
13 agreement, please.

14 COURTROOM DEPUTY: The final restitution
15 breakdown, Judge?

16 THE COURT: Yes, that's what I'm saying because
17 there have been some last minute changes. I just want to
18 make sure that the figure is something that -- that counsel
19 agree with, and Mr. Rogers indicated his agreement to.

20 One other condition is that you'll be required
21 diligently to seek, and if you obtain, to maintain lawful
22 gainful employment. You shall work with the pretrial
23 service probation officer with the efforts that he or she
24 makes on your behalf. And you shall make full and complete
25 financial disclosure promptly forthwith upon request from

1 the probation officer. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. And anything else?

4 MR. LEFFLER: Your Honor, we were wondering if we
5 could go to Elkton Federal Corrections.

6 THE COURT: I will make that recommendation. And
7 counsel, if there are any particular programs that he could
8 benefit from that are available through the Bureau of
9 Prisons, I've just started adding that as a footnote to my
10 sentencing orders. I don't think you got that, I just
11 started actually within the past few weeks. But there is a
12 Bureau of --

13 MR. LEFFLER: There is a sex offender management
14 program at Elkton that we think he should be enrolled in.

15 THE COURT: I will -- I will make that
16 recommendation. I will do so with emphasis given to the
17 fact that the defendant has acknowledged his addiction and
18 his need for re -- and desire for rehabilitative treatment.
19 And that is all without overlooking at all Ms. Tangeman's
20 very -- very substantially convincing response to my
21 initial thoughts.

22 MS. TANGEMAN: Your Honor, your esteemed deputy
23 clerk, once again, reminded me that the Vicky series also
24 requested a no-contact order be issued. I would say that
25 probably would be a fair order with respect to every single

1 C.P. series.

2 THE COURT: To the extent the identity of the
3 victims becomes known to you at any time, for whatever
4 reason, you're to have no contact with them. I realize
5 that's highly unlikely, but, nonetheless, that's a fair
6 request. You can make that request in all further case in
7 front of me, Ms. Tangeman.

8 Okay I've considered the Section 3553(a) factors
9 in reaching the sentence that I have just pronounced.
10 Obviously would have made -- what has been said in the
11 courtroom makes clear of the very serious nature of the
12 offenses. It's not a victimless crime, quote, mere, closed
13 quote, viewing, adds injury to the injury, or injury to the
14 insult, physical insult or emotional insult of the original
15 trauma or traumas these victims suffered whether among
16 those recorded or not.

17 And I've considered the history, nature and
18 characteristic of the defendant. Obviously except for this
19 very severe and deep seeded perversion, and that's what it
20 is, obviously lived a law abiding and productive life. The
21 fundamental purpose is both individual deterrence. I think
22 that the sentence serves that purpose. Once again, as
23 always, I urge the government to publicize, particularly in
24 the media and the, you know, region of his -- I think Huron
25 County or wherever it is, whatever publications and

1 otherwise see to it a press release so others who may be so
2 inclined -- and obviously The Blade and TV media, and
3 broadcast media so that people understand, and so that also
4 the -- I would suggest to the government, if it would, that
5 this is a defendant who thought that he was, quote, immune,
6 that he couldn't be caught. And in fact, the government
7 has means and methods of apprehension that it's employing
8 vigorously to -- to -- to detect and apprehend, prosecute,
9 and have incarcerated, persons who otherwise appear on the
10 surface, outside their own four walls to be living, quote,
11 a normal life, closed quote, when the opposite is quite the
12 contrary. I really think that public deterrence -- we can
13 talk all we want about -- we're never going to stop this
14 traffic, but on the other hand we can, at the very least,
15 try to make clear to those who indulge in its opportunities
16 out there, the self gratification or otherwise, understand
17 that the consequences may be severe, and to that limited
18 extent perhaps we can reduce some of the consequences,
19 though we can never eradicate indicate them.

20 Anything further you wish me to say with regard
21 to the 3553(a) factors?

22 MS. TANGEMAN: Not with respect to that, Your
23 Honor. I'm sorry, did I miss your ruling on the request for
24 valuation of the firearms?

25 THE COURT: That's fine. Absolutely.

1 MS. TANGEMAN: Thank you. Nothing further.

2 THE COURT: And the proceeds, of course, will be
3 applied to the restitution.

4 Counsel, anything further on behalf of your
5 client?

6 MR. LEFFLER: Your Honor, I just understood you
7 to say that he is to be held then, no self surrender on
8 this?

9 THE COURT: That's correct. I mean, I -- I bent
10 to let him out. I just don't think I can now. And there
11 was -- I do think that those familiar with it would find
12 the sentence just. I do think it's sufficient but not
13 greater than necessary to fulfill the purposes of
14 investigation, prosecution, conviction and sentencing.

15 One other thought, it passed through my mind as I
16 was speaking a moment ago, does either party have any
17 objection to any part of these proceedings not otherwise
18 made?

19 MS. TANGEMAN: No objection by the government,
20 Your Honor.

21 MR. LEFFLER: No, Your Honor.

22 THE COURT: I do want to make clear,
23 Ms. Tangeman, I would have reached the same sentence from
24 the get go, that's the issue I have, what is sufficient but
25 not greater than necessary. And the fact that my sentence

1 of acceptance I expressed coming in was going to be a
2 factor, has not been one way or the other -- and, counsel,
3 likewise with your objections.

4 Now, anything further from the government?

5 MS. TANGEMAN: No, Your Honor.

6 THE COURT: Counsel, anything further?

7 MR. LEFFLER: No.

8 THE COURT: Mr. Leffler, anything further?

9 MR. LEFFLER: No, Your Honor.

10 THE COURT: Okay. Mr. Rogers, all I can say is
11 good luck to you, and I hope that you do come out basically
12 cured, and that you work closely with the probation
13 officer. Oh, you will be required, at the direction of the
14 probation officer, to take a polygraph, or such other
15 examinations that the probation officer may deem
16 appropriate. Failure to submit to such may result in
17 revocation and return you to prison, do you understand
18 that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. No computer usage, that's
21 absolutely important. No computer usage without the prior
22 approval of the probation officer who will have the right
23 to inspect any device that you may have, and failure to
24 concede to that request will also definitely result in
25 revocation. Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: When you return you'll be -- you'll
3 have half your life ahead of you with any luck. And I
4 certainly hope that working with the probation officer you
5 will never encounter any problems in that regard or any
6 other with the law. Ms. Tangeman?

7 MS. TANGEMAN: Your Honor, I forgot about
8 forfeiture.

11

12

— — —

13

C E R T I F I C A T E

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18 s:/Angela D. Nixon

November 12, 2019

19

20 Angela D. Nixon, RMR, CRR

Date

21

22

23

24

25